



Virginia  
Regulatory  
Town Hall

## Proposed Regulation Agency Background Document

<b>Agency Name:</b>	Board of Medicine, Department of Health Professions
<b>VAC Chapter Number:</b>	18 VAC 85-20-10 et seq.
<b>Regulation Title:</b>	Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic and Physician Acupuncture
<b>Action Title:</b>	Changes to requirements for USMLE examination
<b>Date:</b>	2-16-00

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

### Summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The Board proposes to amend subsection E of 18 VAC 85-20-140 which sets forth the requirements for examinations. Following a recommendation from the Federation of State Medical Boards, the Board adopted a requirement that an applicant complete Steps 1, 2, and 3 of the USMLE within a seven- year period. That provision would be retained but amended to permit the Board to make exceptions for good cause shown. The provision allowing an applicant to take a combination of the USMLE and the FLEX examination would be deleted, since the Federation no longer accepts a combination of examinations as a prerequisite to sitting for Step 3 of the USMLE.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.*

**18 VAC 85-20-10 et seq. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic and Physician Acupuncture** were promulgated under the general authority of Title 54.1 of the Code of Virginia.

**Chapter 24** establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and issue an inactive license.

*§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:*

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*

7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
8. *To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
9. *To take appropriate disciplinary action for violations of applicable law and regulations.*
10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

**The specific statutory authority for the Board to establish examination requirements is found in:**

**§ 54.1-2913. Examinations.**

*The Board shall prescribe regulations governing the content, administration and grading of examinations for each branch of the healing arts.*

*The Board shall ensure that the identity of an applicant corresponding to a given examination paper is not known to members of the Board until after the applicant has been granted or refused a license.*

**§ 54.1-2913.1. Acceptance of other examinations.**

*In lieu of any or all parts of the examinations prescribed by the Board for a license to practice medicine, osteopathy, podiatry or chiropractic, the Board may:*

- 1. Accept a certificate issued by either the National Board for the appropriate branch of the healing arts or a state board prior to 1970 attesting the satisfactory completion of an examination given by that board if, in the opinion of the Board, the substituted examination material is substantially equivalent to the material for which it is substituted, and the passing grades are in each instance the equivalent of the grades required to be made on the corresponding examinations administered by the Board.*
- 2. Accept a certificate issued by a state board during or after 1970 attesting to the applicant's satisfactory completion of all requirements to practice medicine, osteopathy, podiatry or chiropractic in that state, if the applicant has a current and unrestricted license to practice in another state and a current specialty certificate acceptable to the Board.*

The Assistant Attorney General who provides counsel to the Board of Medicine has provided a letter of assurance that the amended regulations are consistent with statutory law.

### Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

The purpose of the proposed amendments is to amend portions of the examination requirement that are now considered problematic or inconsistent with policies of the Federation of State Medical Boards for the United States Medical Licensing Examination. Requirements for examinations to test the minimal competency of applicants for licensure are intended to provide greater protection for the health and safety of the patients in the Commonwealth.

When the Board was reviewing its regulations pursuant to Executive Order 15(94), it considered a recommendation from the Federation of State Medical Boards that seven years be established as the required time frame in which to complete all steps of the examination. It was thought that some time limit should be established to prevent persons from unnecessarily dragging out the process. Acting on the Federation's recommendation, the Board adopted the seven-year rule in the promulgation of amended regulations, which became effective on August 5, 1998. Now the Board is aware of at least two qualified applicants for whom the seven-year rule could preclude licensure and is concerned that others may get caught in the same situation. Before qualified individuals are denied licensure based on the 1998 rule, the Board wants to provide the possibility for an exception to the requirement.

When the United States Medical Licensing Examination (USMLE) came into existence in 1992, it replaced the FLEX and National Board examinations. The Federation believes that USMLE addresses current medical knowledge and therefore is a more valid examination. During the transition from one examination to the other, the Federation allowed a candidate who had earlier taken the FLEX examination to sit for USMLE Step 3. Now that seven years has passed, the Federation believes that all candidates should have completed the process by December 1, 1999, so it will not accept a combination of examinations after that date. They have informed the Board of that fact and advised that any pending candidates should be processed as soon as possible in order to

meet their deadline. The Board believes it is necessary to conform its rule to the requirement of the Federation in order to provide consistency and clarity to potential applicants. Persons who previously took a combination of examinations and became licensed in another state would still be eligible for licensure in Virginia under 18 VAC 85-20-140.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.*

The Board proposes to amend subdivisions two and three of subsection E in 18 VAC 85-20-140, Examinations, general. The requirement that an applicant complete Steps 1, 2, and 3 of the USMLE within a seven- year period would be retained but there could be exceptions made for good cause shown. The provision allowing an applicant to take a combination of the USMLE and the FLEX examination would be deleted, since the Federation of State Medical Boards no longer accepts a combination of examinations as a prerequisite to sitting for Step 3 of the USMLE.

## Issues

*Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

### **ISSUE #1: Seven-year rule for completion of examinations.**

The issue that has arisen involves the requirement in 18 VAC 85-20-140 E 2, in which applicants for licensure as a medical doctor are required to provide evidence of passing Steps 1, 2, and 3 of the United States Medical Licensing Examination (USMLE) within seven years. Recently, the Board has received applications from two highly qualified individuals who passed Steps 1 and 2 prior to 1992 while they were attending medical school but then went on to acquire other advanced degrees (Ph.D.) before they completed their medical education. USMLE does not allow a candidate to take Step 3 until after graduation from medical school. Since the current regulation did not take effect until August of 1998, the Assistant Attorney General who provides counsel has advised the Board that the seven-year rule was not in effect when these two applicants began the examination process, and therefore it is not applicable for them.

What this situation has pointed out is that the seven-year rule, while well-intended, may not be necessary or advisable. In the future, it may prevent other well-qualified individuals from becoming licensed and practicing medicine in the Commonwealth. The Federation of State Medical Boards, which administers USMLE has recommended that persons complete the examinations within seven years because the medical knowledge becomes stale and outdated. The Board has chosen to retain

the seven-year rule but provide for an exception to that rule for good cause shown. Any exception to the rule would have to come before the Credentials Committee and would be handled on a case-by-case basis.

### **Advantages and disadvantages**

For those few individuals who interrupt their medical education and passage of the three parts of the licensing examination for more than seven years, an exception to the seven-year rule will be very advantageous. It will allow those individuals to become licensed to practice medicine in Virginia, whereas under the current rule they would not be eligible. There are no disadvantages to applicants or licensees.

There should not be any disadvantages to the public. Typically, if the person is able to pass Step 3, he has demonstrated competency to practice medicine. An exception to the seven-year rule may allow a few clearly-qualified individuals to become licensed and practice, which would be advantageous to the citizens of the Commonwealth.

There are no disadvantages to the agency.

### **ISSUE #2: Acceptability of a combination of examinations.**

The Federation of State Medical Boards has notified the Board of Medicine that, after December 1, 1999, the USMLE program will no longer accept hybrid combinations as a prerequisite to sit for Step 3. While it is the Federation that has changed its rules and not the Board, regulation 18 VAC 85-20-140 E 3 may be misleading to applicants. It states that applicants for licensure in Virginia are allowed to take a combination of USMLE and the Federation Licensing Examination (FLEX). If applicants are no longer allowed by USMLE to take a combination of examinations, the Board should amend its rule to prevent an applicant from being confused and misled.

### **Advantages and disadvantages**

There are no advantages or disadvantages to the public; the USMLE examination is now accepted nationally as the measure of competency for persons seeking medical licensure.

Modification of the Board's rule will make it consistent with the current policy of the Federation of State Medical Boards under which the USMLE is offered. The amended rule will be less confusing to applicants.

Clarification of the rule and consistency with national examination requirements will be advantageous to the agency as it provides information to potential applicants for licensure.

## **Fiscal Impact**

*Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget*

*activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus ongoing expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.*

**Projected cost to the state to implement and enforce:**

(i) Fund source:

As a special fund agency, the Board of Medicine must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.

(ii) Budget activity by program or subprogram:

There is no change required in the budget of the Commonwealth as a result of this program.

(iii) One-time versus ongoing expenditures: The agency will incur some costs (approximately \$2000) for mailings to the Public Participation Guidelines Mailing List, conducting a public hearing, and sending copies of final regulations to regulated entities. There are no ongoing expenditures associated with the amended regulations.

**Projected cost on localities:**

There are no projected costs to localities.

**Description of entities that are likely to be affected by regulation:**

The entities that are likely to be affected by these regulations would be applicants for licensure as doctors of medicine or osteopathy.

**Estimate of number of entities to be affected:**

Each year there are approximately 450 to 500 persons approved to take Step 3 of the USMLE in Virginia. Of those that have submitted applications since December 1, 1999, none would be affected by amendments to these regulations; all have taken Steps 1 and 2 of the USMLE. During 1999, there were applications from two persons who did not complete Step 3 within seven years because they had completed another doctorate following medical school. Since they began the process before passage of the "seven-year rule" in 1998, it was determined that they could be licensed under the previous regulation.

**Detail of Changes**

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by*

*the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.*

### **18 VAC 85-20-140. Examinations, general.**

The Board proposes to amend subdivisions two and three of subsection E. The requirement that an applicant complete Steps 1, 2, and 3 of the USMLE within a seven- year period would be retained but there could be exceptions made for good cause shown. The provision allowing an applicant to take a combination of the USMLE and the FLEX examination would be deleted, since the Federation of State Medical Boards no longer accepts a combination of examinations as a prerequisite to sitting for Step 3 of the USMLE.

## **Alternatives**

*Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

In order for the Board of Medicine to address the issues related to the USMLE examination, there is no non-regulatory solution to be considered. Requirements for applicants to sit for the licensure examination are set forth in regulation, which must be amended in order for there to be a change in policy.

By virtue of a decision about eligibility from the Board's counsel, candidates for the Step 3 examination who took Steps 1 and 2 prior to August 5, 1998 will continue to fall under the regulation which was in effect before 1998. They will continue to be eligible under the old regulation. While the Board is able to address the situation for the present, it needs to amend the "seven-year rule" to address future situations.

The decision by the Federation to stop accepting combination examinations (FLEX and USMLE) after December 1, 1999 was not favored by the Board. Board staff has questioned the ruling of the Federation but has been told that it is a final decision of the Federation's Board. Therefore, even if the rule in Virginia is to allow an applicant to take a combination of examinations, the Federation will not accept a candidate applying to sit for USMLE Step 3 who has taken FLEX or National Boards instead of Steps 1 and 2. In order not to mislead applicants, the regulation in Virginia should be modified and clarified to follow the language of the Federation.

## **Public Comment**

*Please summarize all public comment received during the NOIRA comment period and provide the agency response.*

The Notice of Intended Regulatory Action was published on December 20, 1999 and subsequently sent to the Public Participation Guidelines Mailing List of the Board. The deadline for comment was January 19, 2000 and there was no comment received.

### Clarity of the Regulation

*Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.*

Prior to the adoption of proposed regulations by the Board, the Legislative Committee and the Board has discussed the changes in open sessions. The clarity and reasonableness of the language that was adopted had the approval of the licensees, the Assistant Attorney General who worked with the Committee in drafting regulatory language, and members of the Board, including its citizen members.

### Periodic Review

*Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.*

The proposed amendments to these regulations will be reviewed following publication in the Register and the 60-day public comment period. If there are any oral or written comments received, the Board will consider revisions to the proposal prior to adoption of final regulations.

Public Participation Guidelines of the Board of Medicine (18 VAC 85-10-10 et seq.) require a thorough review of regulations each biennium. Therefore, the Legislative Committee of the Board will review this regulation in 2002 and will bring any recommended amendments to the full board for consideration.

In addition, the Board receives public comment at each of its meetings and will consider any request for amendments. Petitions for rule-making also receive a response from the Board during the mandatory 180 days in accordance with its Public Participation Guidelines.

### Family Impact Statement

*Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

An analysis of the proposed regulation indicates that there would be no effect on the rights of parents, economic self-sufficiency, the marital commitment or disposal family income.